



May 5, 2005

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Myth-Fact

Myth: Filibusters of judicial nominations are based on the Constitution

Fact: Filibusters of judicial nominations are never mentioned in the Constitution. They are a creature of Senate rules and procedures, and can be eliminated by a majority vote of the Senate. The Constitution does say that the Senate has an obligation to give advice and, if it approves, consent to the President’s nominations. This constitutional obligation is being thwarted by the unprecedented use of partisan filibusters to block fair, up-or-down votes.

In 1998, Sen. Leahy said promptly confirming judges was the Senate’s “Constitutional Responsibility.” “We must redouble our efforts to work with the President to end the longstanding vacancies that plague the federal courts and disadvantage all Americans. That is our constitutional responsibility.” (Sen. Patrick Leahy, Congressional Record, 9/8/99, p. S10544)

On The Floor

Representative Steve Chabot (R-OH), Floor Statement, 5/4/05

As an elected official from the First District of Ohio, I took an oath office to uphold the Constitution. In taking the oath, I have obligation to ensure that the Constitution and intent of our Founding Fathers is protected. The American people deserve to know that the Constitution, the intent of the Framers, and 214 years of tradition are being jeopardized by use or the threatened use of the filibuster on judicial nominations.

Never has a nomination with clear majority support been denied an up-or-down vote. The filibuster is not part of the Constitution nor is it even part of the original Senate rules. However, the use of the filibuster on judicial nominations threatens the very principles on which our country was founded - by forcing the Constitution to yield to a Senate rule - a predicament that should be untenable to all who have sworn to uphold this most sacred document.

The filibuster has been and continues to be a necessary Senate tool to ensure legislation represents all views. It should remain. However, judicial nominees deserve more and the American people deserve more. They deserve what the Constitution affords - an up-or-down vote.

Representative Virginia Foxx (R-NC), Floor Statement, 5/4/05

Mr. Speaker, I rise *again* today to add my voice to the chorus that has convened in this House Chamber to denounce the grave disservice that the Senate Democrats are doing to our fellow Americans.

When the Framers of our Constitution brilliantly crafted the greatest form of government on earth, they deliberately installed a detailed system of checks and balances.

Under that system, judges and courts are not supposed to legislate, and legislators are not supposed to make court decisions.

However, by refusing to do their jobs and not even considering judicial appointments, Democrats in the Senate are making a mockery of the government our forefathers put their lives on the line to obtain.

Mr. Speaker, just as many of my colleagues and I frequently contest the dangerous trends and practices of activist judges, we have gathered this evening to oppose the equally dangerous activities of the partisan, activist Democrat Senators.

Or should I say INACTIVIST Senators?

As any student of American government knows, it is the job of the President to nominate fellow Americans to serve as federal judges. And it is the job of the Senate to either approve or reject those nominations. It's a simple system that guarantees proper checks and balances in the manner our forefathers envisioned.

Over the past two years though, Senate Democrats have exploited parliamentary loopholes to prevent the Senate from voting up-or-down on many of President Bush's highly qualified nominees. They are cowardly hiding behind the Senate filibuster to block judicial nominees who have the support of the majority of the Senate - something that has never been done before in American history.

Democrats in the Senate aren't asking for time to debate these nominees. They aren't going to the American people and explaining why they oppose them. They aren't even attempting to persuade their Republican colleagues to vote "no."

No, Mr. Speaker, they are just refusing to vote. And that is just wrong.

Mr. Speaker, I stand for this simple proposition - that every judicial nominee of the President deserves a fair, yes-or-no vote.

If Democrats don't like the President's nominees, they can vote "no," but to avoid voting altogether is a dangerous disservice to our nation.

I urge the minority in the Senate to stop playing politics with our justice system and to start doing their job.

I hope the Democrats in the Senate are using their time off this week to contemplate their recklessly irresponsible actions.

It is time to put partisanship aside, like many of my sensible colleagues have done in the House.

With no real agenda coming from their Leadership, constructive Democrats have found a legislative home with House Republicans this year.

As the Republican Party has made great strides for our Nation during the first few months of this Congress, many House Democrats have joined the majority in working for a better America:

- 73 Democrats voted to pass Bankruptcy Reform
- 50 Democrats voted for Class Action Reform
- 42 Democrats voted for the Real ID Act
- 122 Democrats voted for Continuity in Government
- 42 Democrats voted to Repeal the Death Tax

Mr. Speaker, the Republican Party is accomplishing great things for America every day. Many House Democrats have joined in that progress.

I hope the Democrats in the Senate will put their partisan, irresponsible instincts aside and DO THEIR JOB when they return to Washington.

Stop the filibuster on judicial nominees and put them to a vote.

Editorials

“President’s nominees deserve a vote,” by Senator Lisa Murkowski, Anchorage Daily News, 5/3/05

The use of the filibuster in the United States Senate and the president's judicial nominations have been popular topics of conversation in recent weeks. Print ads, radio spots and television commercials have all highlighted the irrefutable harm -- or unquestionable good, depending on your point of view -- that the filibuster represents. What is not often mentioned is the impact this debate could have on other items of importance to the country and Alaska, such as ANWR, the energy bill, health care and the highway bill.

Let me make it clear that I support an up-or-down vote on all nominations brought to the Senate floor, regardless of the president nominating them or which party controls the Senate. These nominees deserve to be considered based on their merits. Under the "advice and consent" process, every senator has the right to vote against a nominee if he or she does not believe the nominee is qualified for the position, but it is not fair to the nominees to have their lives placed on hold -- sometimes in excess of two years while the process drags on. Nor is it right to perpetuate the many vacancies in our courts, particularly when we are seeing the caseload exceed the capacity of the sitting judges.

Last Congress, 10 of the president's judicial nominees were filibustered. The impasse over these nominees has led the Senate majority leader to consider the possibility of seeking a ruling that the use of the filibuster on judicial nominees is unconstitutional, thus allowing an up-or-down vote on their confirmation. Some have dubbed this the "nuclear option." Democrats have threatened to shut down the Senate through procedural tactics, such as the filibuster, if this ruling is agreed to.

There is plenty of blame to go around as to which side has stopped judges in the past -- whether on the floor or in committee. But this misses the point of where we are today. The argument shouldn't be about whether we invoke the constitutional option, or "go nuclear," but how we make the confirmation process work. We need to act together as senators to define what is best for the institution. Constructive dialogue over how we achieve the goal -- a fair process to confirm fair judges -- is necessary.

In April 2003, I joined with all of my fellow freshmen senators in writing to Majority Leader Bill Frist and then-Minority Leader Tom Daschle expressing our concern about the breakdown in the federal judicial nomination and confirmation process. We expressed our hope for a "bipartisan solution that will protect the integrity and independence of our nation's courts, ensure fairness for judicial nominees, and leave the bitterness of the past behind us."

What happens if we cannot reach that agreement? At stake for Alaska is much more than whether a judicial nominee is confirmed or not. For the first time in 10 years, the Senate has included a provision in the budget resolution to open ANWR. The House passed an energy bill that includes ANWR along with a number of other provisions that will benefit Alaska. The Senate has taken up the highway bill that contains a considerable amount of federal dollars for Alaska's infrastructure development. But if the Senate is paralyzed because of the dispute over judicial nominees, none of these bills become law and Alaska does not see the benefits. Alaska has a tremendous opportunity this year in terms of developing our resources, our economy and our future. None of this, however, will matter much if the Senate is locked in partisan wrangling over judicial nominations.

I remain committed to a constructive solution and have encouraged Senate leaders on both sides of the aisle to find another way -- to allow for an up-or-down vote on judicial nominees while respecting the traditions of the Senate. It is my sincere hope that we will be able to reach a compromise to enact legislation to stimulate our economy, protect national security and promote the national welfare, and to provide advice and consent, and to vote on the president's nominations.

Sen. Lisa Murkowski was appointed to the U.S. Senate in 2002 and elected in 2004. She previously served in the state House of Representatives.

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